



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 17, 2017

CERTIFIED MAIL/RETURN RECEIPT

Kori Grillo, Director of Social Work
Terrence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, NY 10029

Amy Ebbinger, Esq.
1011 1st Avenue
New York, NY 10022

[REDACTED], Resident
c/o Terrence Cardinal Cooke Health Care
1249 Fifth Avenue
New York, NY 10029

Wanda Coles, Ombudsman
Richard Danford, Ombudsman
841 Broadway, Suite 301
New York, NY 10003

RE: In the Matter of [REDACTED] - Discharge Appeal

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter. This Decision is final and binding.

The party who did not prevail in this hearing may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the party wishes to appeal this decision it may seek advice from the legal resources available (e.g. their attorney, the County Bar Association, Legal Aid, etc.). Such an appeal must be commenced within four (4) months from the date of this Decision.

Sincerely,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: mw
Enclosure

COPY

STATE OF NEW YORK : DEPARTMENT OF HEALTH

In the Matter of

█/Terrence Cardinal Cooke Healthcare
Center

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident Discharge
pursuant to Title 10 NYCRR §415.3(h)

Before: Administrative Law Judge (ALJ) James F. Horan

For Terrance Cardinal Cooke Healthcare
Center (Facility):

Amy Ebinger, Esq.; Kori Grillo, Director of Social
Work

For Resident █ (Appellant):

Richard Danford, Wanda Coles
Ombudsman Program

The Facility moved to discharge the Appellant involuntarily on the grounds that the Appellant's condition has improved sufficiently so that she no longer requires care in a nursing home. The Facility proposes discharge to the New York City Shelter System. The Appellant opposes being discharged to the shelter system. At the discharge appeal hearing, both parties offered testimony and the Appellant offered documents into the record. After reviewing the record, the ALJ finds that the Facility has failed to produce credible documentation to show that a physician has found the proposed discharge safe and appropriate.

I. Background

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights in regard to transfer or discharge. Title 10 NYCRR § 415.3 (h)(1)(i)(a)(2) allows involuntary discharge if a resident's health has improved sufficiently so that the resident no longer requires the services that the facility provides. Under the standards at 10 NYCRR § 415.2(k), a nursing home provides

nursing and professional services twenty-four hours per day for patients who require those services, but do not require services in a general hospital. Under the provisions at Title 10 NYCRR § 415.3(h)(1)(i)(c)(ii)(a) a resident's physician and the interdisciplinary care team must ensure complete documentation to support the grounds for discharge. In effect, this proceeding acts as a stay on any discharge, until the decision on the discharge appeal. If a decision approves the discharge grounds and discharge plan, the proceeding ends with the decision and the discharge may proceed according to the discharge plan.

The Facility provided a Discharge Notice [ALJ Exhibit I] to the Appellant on [REDACTED] 2017. As grounds for the discharge, the Discharge Notice stated that the Appellant's health had improved so that the Appellant no longer needed services at the Facility. The Notice proposed discharge to the [REDACTED] on [REDACTED]. The Appellant then requested the hearing that took place at the Facility in Manhattan on March 8, 2017. At the hearing, the Appellant testified in her own behalf. Ombudsman Richard Danford also testified for the Appellant. Mr. Danford's testimony included a discussion of the [REDACTED] Shelter [REDACTED] standards for accepting patients referred from medical facilities. The Facility presented the Director of Social Work Kori Grillo and Linda Watson, R.N., the Nurse Manager on the Appellant's floor. Ms. Grillo's testimony also discussed the Shelter System's process for accepting transfers from medical facilities.

The ALJ received into the record the Notice of Hearing with Discharge Notice attached [ALJ Exhibit I], a March 10, 2017 letter from the ALJ to the parties forwarding copies of the four exhibits the Appellant offered into the record [ALJ Exhibit II] and a March 15, 2017 letter from the ALJ to the parties requesting an update on an evaluation to assess the Appellant's fitness for the Olmstead Housing Subsidy Program [ALJ Exhibit III]. The Appellant produced four

exhibits: a four-page Resident Diagnosis Report [Appellant Exhibit A]; seven pages of Physician Orders [Appellant Exhibit B]; eleven pages of [REDACTED] ([REDACTED] forms relating to inpatient medical facility discharges to [REDACTED] Shelters [Appellant Exhibit C] and a one page [REDACTED] Overview of the Shelter System and Criteria for determining medical inappropriateness for shelters, with an email transmitting that information to Mr. Danford [Appellant Exhibit D]. The Facility submitted no documents into the record.

The record also included a digital audio recording from the hearing on compact disc (CD). References to testimony from the audio recording will indicate the place recording at which the testimony occurs the recording (*e.g.* “ CD 12:40” means that the testimony occurs on the hearing recording 12 minutes and 40 seconds into that recording).

Under the hearing procedures at §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under N.Y. Administrative Procedure Act 306(1) (McKinney 2015), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649. The substantial evidence standard demands only that a given inference is reasonable and plausible, not necessarily the most probable, Ridge Road Fire District v. Schiano, 16 N.Y.3d 494 (2011).

II. Findings of Fact

The matters in brackets following the findings reflect testimony from hearing recording or exhibits in evidence [Ex] on which the ALJ relied in making the findings. If contradictory information appears elsewhere in the record, the ALJ considered that information and rejected it.

1. The Appellant entered the Facility for rehabilitation on [REDACTED] 2015, following [REDACTED] [CD 13:15, 13:35].
2. The Appellant has completed rehabilitation [CD 50:40].
3. The Appellant suffers from [REDACTED] has a history of [REDACTED] and is prescribed [REDACTED] times per week [CD 11:47, 12:21].
4. The Medication Orders for the Appellant include the drugs [REDACTED] and [REDACTED] for [REDACTED] [Ex A, page 4 of 7].
5. During her stay at the Facility, the Appellant underwent involuntary hospitalization in a [REDACTED] unit [CD 1:02:47].
6. The Facility proposes discharge to a [REDACTED] intake shelter [ALJ Exhibit I].
7. The [REDACTED] (System) operates 84 shelters, with 6 intake/assessment shelters [Ex D, second page].
8. The System does not have medical shelters or medical respite facilities and clients are unable to obtain home care services on-site [Ex D, second page].
9. The criteria for determining inappropriateness for the System include severe [REDACTED] [REDACTED] [Ex D, second page].

III. Conclusions

The ALJ concludes from the Exhibits and the testimony that the Appellant received reasonable and appropriate notice about this discharge, pursuant to Title 10 NYCRR § 415.3(b).

Under 10 NYCRR § 415.3(h)(1)(i)(a)(2) a skilled nursing facility may discharge a resident involuntarily if the resident's health has improved sufficiently so the resident no longer needs the facility's services. In such instances, Title 10 NYCRR § 415.3(h)(1)(i)(c)(ii)(a) requires that a resident's physician and the interdisciplinary care team ensure complete documentation to support the grounds for discharge. No physician testified at this hearing and the Facility offered no documentation into the record to establish that a physician found the proposed discharge to the System safe and appropriate.

The Appellant, on the other hand, presented evidence to question whether the Appellant is medically appropriate for discharge to the System. The Medication Orders for the Appellant list medications for [REDACTED] [Ex B, page 4 of 7] and the criteria for determining medical inappropriateness for the System include severe [REDACTED] [REDACTED] [Ex D, second page]. The Appellant lived previously in the [REDACTED] Shelter System, with her [REDACTED] in [REDACTED] [CD 47:55]. Nothing in the record indicates the Appellant's medical condition when she entered the [REDACTED] and whether she had a history of [REDACTED] at that time. During her testimony, Ms. Grillo indicated that the Facility has discharged other residents to [REDACTED] and that the [REDACTED] admission criteria were subject to change.

The Facility bears the burden to prove a proposed discharge safe and appropriate. The Facility has failed to meet that burden.

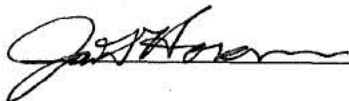
There was discussion at the hearing that the Appellant was awaiting an assessment about her fitness for the [REDACTED], which could have provided the Appellant with assistance in finding housing. The assessment was set to take place soon after the hearing. The ALJ wrote to the parties on March 15, 2017 requesting information concerning the assessment's outcome [ALJ Exhibit III]. In the two months since the ALJ sent that request, neither party has replied. The time has come to close this record.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

The ALJ dismisses the [REDACTED], 2017 Discharge Notice due to the Facility's failure to produce documentation to show that a physician has found the proposed discharge safe and appropriate.

Dated: Menands, New York
May 16, 2017



James F. Horan
Administrative Law Judge

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